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UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Case No.: 2:24-cr-00331-AB-05
	)	
Plaintiff,	)	DEFENDANT SHUYI XING'S
vs.	)	OPPOSITION TO GOVERNMENT'S
	)	APPLICATION FOR REVIEW OF
YANG SONG, et al., (SHUYI XING),	)	MAGISTRATE JUDGE DENIAL OF
Defendants.	)	DETENTION HEARING;
	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES.
	)	

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Defendant Shuyi Xing, individually and by and through his attorney of record in this case, David J. Kaloyanides, hereby files this Opposition to the Government's Application for Review of the Magistrate Judge's Order Denying its request for a detention hearing..

This Opposition is based on the accompanying Memorandum of Points and Authorities, the papers, pleadings, and other documents in the Court's file, the evidence presented at the initial hearing regarding the government's request for detention,

1 defendant's Due Process Rights, his Sixth Amendment right to effective assistance of  
2 counsel, the argument and such other evidence as may be presented at the hearing of this  
3 matter, and such other matters of which the Court may take judicial notice.  
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5 Respectfully submitted,  
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7 Date: 3 September 2024

s/ David J. Kaloyanides

8 David J. Kaloyanides  
9 Attorney for Defendant  
Shuyi Xing  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

At the outset, the government's request that Mr. Xing be remanded should be denied. It is unsupported by the evidence—the clearest of which is the fact that Mr. Xing has fully complied with all the conditions of his pretrial release bond for nearly three months. The “parade of horrors” of which the government has warned to be imminent never came to pass. There can, therefore, be no question that the current combination of conditions are more than sufficient to support Mr. Xing's continued pretrial release.

This leaves the government's other argument: that it was entitled to a detention hearing in the first place. In this, the government asserts two inconsistent arguments: first, that by the express language of the statute, there is no burden of proof for finding one or both of the conditions required to trigger a detention hearing; and second, the only requirement for triggering the detention hearing (i.e. the burden of proof) is the government's good faith belief.

Either Congress intended a burden of proof or it didn't. The government cannot have it both ways. If the absence in the statutory language of 18 U.S.C. §3142(f) means there is no burden of proof, the government cannot read into the statute the standard of “good faith belief” by the government. This would lead to an absurd result: Congress requires a finding by the express language (serious risk of flight or serious risk of obstruction) to trigger the hearing but does not require any quantum of showing.

1 If Congress had intended to trigger the hearing based on governmental belief—  
2 good faith or otherwise—it would have said so. But nothing in the statute suggests or  
3 allows for the inference that Congress intended to apply such a vacuous standard.

4 The decision of the Magistrate Judge was correct. A showing by a preponderance  
5 of the evidence that one or both of the two express requirements exists is the proper  
6 standard to trigger a detention hearing.

7 And this Court should affirm that ruling.

## 8 9 II. STATEMENT OF FACTS

10 Mr. Xing is charged with Conspiracy to commit wire fraud and mail fraud (18  
11 U.S.C. § 1349); Aggravated Identity Theft (18 U.S.C. § 1028A); actual wire and mail fraud  
12 (18 U.S.C. § 1343 and 1341); and Conspiracy to traffic in counterfeit goods (18 U.S.C. §  
13 2320). These charges arise out of the alleged manufacturing of counterfeit products of  
14 Apple Inc., namely Apple's iPhone and iPad, and the actual and attempted presentation of  
15 these counterfeit products to Apple Inc. as genuine in order to defraud Apple Inc. into  
16 exchanging the products for actual products manufactured by Apple Inc. The  
17 Government alleges that when the co-conspirators secured actual Apple products, the  
18 products were shipped out of the United States to other locations, primarily China, where  
19 they were sold for a substantial profit.

20 At Mr. Xing's initial appearance, the Court took evidence to determine whether  
21 the government could show that it was entitled to a detention hearing. The government's  
22 request was based on 18 U.S.C. §3142(f)(2)(A) and (B), alleging that there was a serious  
23 risk that Mr. Xing would flee and that there was a serious risk he would obstruct or  
24 attempt to obstruct justice.

1           The government presented evidence in the form of testimony of the case agent  
2 and several exhibits. As the Court will recall, the case agent could not answer basic  
3 questions concerning the government's allegations regarding obstruction of justice. Nor  
4 could the case agent answer questions relating to questions of risk of flight as the case  
5 agent had no direct, personal knowledge regarding the cash found at Mr. Xing's residence  
6 nor the allegations that Mr. Xing had set up and controlled certain bank accounts through  
7 which over one million dollars of purportedly fraudulent transfers were made. Ultimately,  
8 the government withdrew its request for a hearing based on the allegation that Mr. Xing  
9 posed a serious risk of obstruction.

10           The Court took the matter under submission. After additional briefing by the  
11 parties, the Court determined that the government had not met its burden showing it was  
12 entitled to a detention hearing. Nonetheless, the Court imposed strict conditions on Mr.  
13 Xing for his pretrial release. (*See* Dkt. No. 66).

14           Subsequently, the government sought review of that order. This Court referred  
15 the matter to the Magistrate Judge (*See* Dkt. No. 78), and the Magistrate Judge again  
16 denied the government's request for hearing. (*See* Dkt. No. 100).

17           The government then raised the instant request with the District Court, (*See* Dkt.  
18 No. 102), and this Court granted a hearing (*See* Dkt. No. 104).

### 20   III. ARGUMENT

#### 21           A. THE GOVERNMENT WAS NOT ENTITLED TO A DETENTION 22           HEARING.

23           The government's assertion that there is no standard it must meet before a  
24 detention hearing is held is not supported by the language of §3142(f). Nor is its assertion

1 that the standard is merely it's own good faith belief. While there is no express burden of  
2 proof set forth in §3142(f), nowhere in §3142 as a whole did Congress suggest a standard  
3 based on governmental whim.

4 By its express terms, §3142(f) is a two-step approach. First, there must be a  
5 showing that a detention hearing should be held. If, and only if that showing is made, is a  
6 hearing held to determine whether or not there are conditions that can be imposed that  
7 would permit the defendant's pretrial release. These are two separate inquiries with two  
8 distinct goals. Contrary to the government's assertion, Congress required specific findings  
9 in order to trigger a detention hearing.

10 Under §3142(f)(1), there must be a showing requiring a finding by the Court that  
11 the defendant is charged with one of the categories of offenses listed in subsections (A)  
12 through (E). But as set forth in the Legislative History of the Bail Reform Act of 19984,  
13 that finding alone is not sufficient to warrant the hearing.

14 The fact that the defendant is charged with an offense described in  
15 subsection (f)(1)(A) through (C) is not, in itself, sufficient to support a  
16 detention order. However, the seriousness of the offenses described in  
17 subsection (f)(1)(A) through (C) coupled with the government motion is a  
18 sufficient basis for requirement an inquiry into whether detention may be  
19 necessary to protect the community from the danger that may be posed by a  
20 defendant charged with one of these crimes.

21 1984 U.S.C.C.A.N. at 3204.

22 Thus, specific findings are required to trigger a detention hearing under  
23 subsection (f)(1). But the specific findings alone do not trigger the hearing. The  
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1 government must still make the request. The statute does not even give the authority to  
2 the Court to hold the hearing on its own motion under subsection (f)(1).

3 This is different from the requirements under subsection (f)(2). There, the  
4 hearing may be held on the motion of the government or the Court *if, and only if*, the case  
5 involves a serious risk of flight or a serious risk of obstruction of justice. Subsections  
6 (f)(2)(A) and (B) limit when a detention hearing can be held in circumstances other than  
7 under subsection (f)(1). *See* 18 U.S.C. §3142(f)(2); *see also* 1984 U.S.C.C.A.N at 3204.

8 The context of words and phrases in statutes is key to interpreting them.

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10 [T]he canon of *noscitur a sociis* teaches that a word is “given more precise  
11 content by the neighboring words with which it is associated.” *United States*  
12 *v. Williams*, 553 U.S. 285, 294 (2008). That “avoid[s] ascribing to one word a  
13 meaning so broad that it is inconsistent with” “the company it keeps.”  
14 *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995).

15 *Fischer v. United States*, 603 U.S. --- slip. op. at 5 (28 June 2024).

16  
17 Subsections (A) and (B) of 18 U.S.C. §3142(f)(2) restrict the Court’s authority to  
18 hold a detention hearing. Both require a *judicial* finding. Nothing in the express language  
19 of the statute nor the legislative history suggests that such judicial finding is to be  
20 abandoned to governmental discretion nor such determination relinquished to  
21 governmental belief.

22 Where the government’s position regarding a defendant’s pretrial detention is, as  
23 most frequently, influenced if not directly based upon the views of agents investigating  
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1 the defendant and the crime he is alleged to have committed, the analogy to the due  
2 process concerns that give rise to the requirement that a neutral and detached magistrate  
3 make probable cause determinations is particularly apt. In the Fourth Amendment  
4 context, the Supreme Court has long recognized:

5       The point of the Fourth Amendment, which often is not grasped by zealous  
6 officers, is not that it denies law enforcement the support of the usual  
7 inferences which reasonable men draw from evidence. Its protection  
8 consists in requiring that those inferences be drawn by a neutral and  
9 detached magistrate instead of being judged by the officer engaged in the  
10 often competitive enterprise of ferreting out crime.

11 *Johnson v. United States*, 333 U.S. 10, 13-14 (1948); *see also Gerstein v. Pugh*, 420 U.S. 103,  
12 112-13 (1975).

13       In the context of pretrial detention where liberty interests still exist, if not to the  
14 same degree as arise under the Fourth Amendment, nothing in the language of §3142(f)  
15 suggests that Congress intended to leave the discretion for a detention hearing in the  
16 hands of the government.

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18       B. AT MINIMUM, A PREPONDERANCE OF THE EVIDENCE SHOULD BE  
19       REQUIRED TO TRIGGER A DETENTION HEARING.

20       Absence of an express burden of proof under §3142(f) does not mean there is no  
21 standard at all. Inference from context and related sections of a statute provide guidance  
22 as to Congress's intent in the absence of express language. For example, the statute  
23 imposes a clear and convincing standard for detention based on a finding of  
24 dangerousness. 18 U.S.C. §3142(f)(2). It is silent on the government's burden based on



1 risk of flight. As the statute requires a finding of dangerousness be supported by clear and  
2 convincing evidence, Courts have held that Congress must have intended a different  
3 standard of proof because of its silence on the question of risk of flight. *See United States v.*  
4 *Motamedi*, 767 F.3d 1403, 1406 (9th Cir. 1985). Most courts have interpreted the statute to  
5 require a preponderance of the evidence. *See United States v. Gebro*, 948 F.2d 1118, 1121  
6 (9th Cir. 1991); *United States v. Vortis*, 785 F.2d 327, 329 (D.C. Cir. 1986); *United States v.*  
7 *Himler*, 797 F.2d 156, 161 (3d Cir. 1986); *United States v. Chimurenga*, 760 F.2d 400, 405-06  
8 (2d Cir. 1985); *United States v. Portes*, 796 F.2d 768, 765 (7<sup>th</sup> Cir. 1985); *United States v. Orta*,  
9 760 F.2d 887, 891 & n.20 (8th Cir. 1985); *United States v. Medina*, 775 F.2d 1398, 1402  
10 (11th Cir. 1985).

11 Finding Congressional intent for a burden of proof by inferences based upon the  
12 language in other and related sections of the same statute is well-established in statutory  
13 construction. Creating a new standard—good faith belief by the government—is not.

14 Thus, at a minimum, to trigger the hearing, the government must be able to show  
15 serious risk of flight or serious risk of obstruction by a preponderance of the evidence.

16 However, Due Process suggests that a higher burden of proof is appropriate.  
17 Where liberty interests are at stake, more than even preponderance should be the  
18 standard.

19 The standards in civil commitment proceedings provide an apt analogy. In  
20 *Addington v. Texas*, 441 U.S. 418, 99 S.Ct. 1804 (1979), the Supreme Court explained that  
21 the standard of clear and convincing evidence is appropriate in cases in which the  
22 individual's interest at stake is more substantial than financial consequences as is typical in  
23 a civil matter but less substantial than the consequences of a criminal conviction. *Id.* at  
24

1 427, 431-33. This is the precise interest an individual has in a detention proceeding. In  
2 *Addington* where the issue was the standard of proof in civil commitment proceedings—  
3 the interest at stake is the liberty from non-punitive, regulatory confinement. *See Bell v.*  
4 *Wolfish*, 441 U.S. 520, 536-37 (1979) (pretrial detention must be regulatory, not punitive).  
5

6 IV. CONCLUSION

7 The Magistrate Judge’s determination that the government was not entitled to a  
8 detention hearing was correct. Employing a preponderance of the evidence standard for  
9 triggering the detention hearing is supported by the language of the statute and how the  
10 statute has been interpreted by numerous court. The government’s suggestion of a “good  
11 faith belief” standard where liberty interests are at stake is tantamount to no standard at  
12 all. This Court should affirm the Magistrate Judge’s decision.

13 Respectfully submitted,  
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15 Date: 3 September 2024

s/ David J. Kaloyanides

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17 Attorney for Defendant  
18 Shuyi Xing  
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